

Docket No. 1948-4293US1**REMARKS**

Claims 1-7, 9-18, 20, 22-25, and 27-39 are pending.

Claims 12-18, 20, 22-24, 27, and 29-32 were previously withdrawn from consideration.

Claims 8 and 26 were previously canceled.

Claims 1-7, 9-11, 25, 28, and 33-39 are rejected.

Claims 1 and 33 are independent claims.

Claims 1 and 33 are amended herein.

Rejections Under 35 U.S.C. § 112(b)

Claims 1-7, 9-11, 25, 28, and 33-39 are rejected under 35 U.S.C. § 112 as indefinite for allegedly failing to particularly point out and distinctly claim the subject matter of the invention. The Office asserts that independent claims reciting "filler ranging by weight between a nonzero percentage proximate 0% to approximately 40%" encompasses the lack of component filler, which allegedly can be zero. The Office notes that proximate means immediately preceding or following and alleges the independent claims encompass no filler. The independent claims are thus rejected. The dependent claims are rejected as depending from a rejected base claim.

The Applicants respectfully disagree with this characterization and submit that the claims, as previously presented, clearly recite the inclusion of some amount of filler in the claimed friction material. Filler of nonzero percentage proximate 0% is an amount of filler close to zero filler. In a mathematical sense, there are only three possible values for a number/amount: 1) the amount is negative; 2) the amount is zero; and 3) the amount is positive.

Addressing the first possibility, clearly the claimed friction material can not include a negative amount of filler; such a circumstance is not physically possible and makes no sense. The Office's proffered definition of 'proximate' as 'immediately preceding or following' is not instructive in this context since, the claimed material can not include an amount of filler immediately preceding 0% (i.e., a negative amount of a constituent element).

Second, the claim friction material clearly recites a nonzero percent of filler proximate

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0%. 'Proximate', as used in the claims, merely means 'very near' or 'close.' See WEBSTER'S COLLEGIATE DICTIONARY (Mish ed., 9th ed. 1988). Additionally, the Office's proffered definition, 'immediately preceding or following' precludes the amount of filler from being zero.

Accordingly, the claimed friction material recites an amount of filler immediately following 0%. That is, the material includes a positive amount of filler which ranges from near zero filler to approximately 40% filler.

The Applicants respectfully submit that the previously presented recitation is definite, at all times calling for the inclusion of some amount of filler in the claimed friction material. Specifically, a negative amount of filler makes no sense in the physical world and a zero amount of filler is excluded by the language of the claims. Nevertheless, merely in the interest of further prosecution, the Applicant has amended the claimed friction material of independent claims 1 and 33 to include approximately 1% to 40% filler. Accordingly, the Applicant respectfully submits that independent claims 1 and 33, and claims 2-7, 9-11, 25, 28, and 34-39 based on claim dependency, are definite. Thus, the Applicants respectfully request withdrawal of the rejection of all pending claims under 35 U.S.C. 112(b).

Rejections Under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a)

Claims 1-5, 9-11, 28 and 33-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Kearsey (US 5,585,166). Claims 6, 7, 25 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kearsey in view of Yang (US 4,836,507).

The Applicant traverses this rejection with notice that the Kearsey reference is not prior art. Kearsey has a United States filing date of February 24, 1995. The present application has priority to a corresponding French application filed March 25, 1994.

The present application is a continuation of Application No. 08/553,573 filed November 27, 1995, which issued as US Patent 5,807,518 on September 15, 1998. (Cover page included herewith). That parent application claimed priority to PCT Application No. PCT/FR95/00320 filed March 6, 1995 which in turn claimed priority to French Application No. 94 03518 filed March 25, 1994. Accordingly, the present application has a priority date of March 25, 1994.

The priority date of the present application, March 25, 1994, pre-dates the effective date of the Kearsey reference, February 24, 1995. Accordingly, Kearsey is not prior-art to the present

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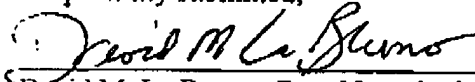
application. Therefore, the current rejections has been obviated and allowance of all claims is respectfully requested.

Conclusion

Based on the foregoing remarks, it is respectfully submitted that all the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of the rejections are respectfully requested.

In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

Respectfully submitted,


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